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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/747,817	12/22/2000	Rommel C. Lumaug	ACSC 60133 (2109)	4301

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EXAMINER

PELLEGRINO, BRIAN E

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 12/31/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Offic Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/747,817	LUMAUIG, ROMMEL C.
	<b>Examiner</b>	<b>Art Unit</b>
	Brian E Pellegrino	3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 03 October 2003.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-8 and 10-23 is/are pending in the application.

4a) Of the above claim(s) 17-22 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-8, 10-16 and 23 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \*    c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
 a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

1) Notice of References Cited (PTO-892)                    4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                    5) Notice of Informal Patent Application (PTO-152)  
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 16.                    6) Other:

**DETAILED ACTION*****Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/3/03 has been entered.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1,2,10-12,15,23 are rejected under 35 U.S.C. 102(b) as being anticipated by Burns (5569201). Fig. 1B shows a catheter with an outer tubular member **14** and an inner tubular member **18** and an inflatable balloon **20** on the distal shaft. Fig. 4A shows the inner tubular member receives a guidewire **22** and is bonded to the inner surface of the outer tubular member via bonds **46**. Burns discloses the tubes or bonding means are about 1mm, col. 6, lines 31,32 and see Fig. 4B. The balloon is fully capable of being configured for a deployable device. It can be seen (Fig. 4A) that there are opposing or equal distance bonded sections.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burns '201. Burns is explained as before. However, Burns does not disclose the secured portions about 2-4mm in length or a radial dimension ranging from 0.5-3mm or spacing the secured portions from the balloon at about 3mm. It would have been an obvious matter of design choice to modify the longitudinal dimension of the secured portions or radial dimension, since applicant has not disclosed that using a length about 3mm or radial dimension from 0.5-3mm provides any advantage, or solves a stated problem, or is used for any particular purpose. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the longitudinal dimension or radial dimensions as taught by Burns or the claimed longitudinal dimension or radial dimension in claim(s) 3,5,6 because both longitudinal and radial dimensions still function to attach or bond the tubular elements together and provide separate lumens. Regarding claims 7,8, it would have been an obvious matter of design choice to modify the spacing between the secured portion and balloon's proximal end, since applicant has not disclosed that using a range up to about 3mm provides any advantage, or solves a stated problem, or is used for any particular purpose. One of ordinary skill in the art, furthermore, would have expected Applicant's

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invention to perform equally well with the spacing taught by Burns or the claimed range up to 1mm or up to 3mm in claim(s) 7,8 because both spacings perform the same function of providing a separation of the inflation area and expansion area.

Claims 13,14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burns '201 in view of Muni et al. (5533968). Burns is explained supra. However, Burns does not disclose the outer and inner tubular members are made from different materials. Muni et al. teach that outer and inner tubular members of a catheter are made of different material and bonded by heat, col. 11, lines 16-32. It would have been obvious to one of ordinary skill in the art to use different materials for the tubular members of the catheter as taught by Muni in the balloon catheter of Burns such that a stronger bond may be achieved.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burns '201 in view of Brown (6096056). Burns is explained supra. However, Burns does not disclose the intermediate section of the balloon has a stent. Brown teaches (Fig. 3) a stent **18** on the intermediate portion **16** of the balloon **14**. It would have been obvious to one of ordinary skill in the art to use a stent in the intermediate region as taught by Brown in the balloon catheter of Burns in order to deliver a support structure to maintain the vessel lumen open.

### ***Response to Arguments***

Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Pellegrino whose telephone number is (703) 306-5899. The examiner can normally be reached on Monday-Thursday from 8am to 5:30pm. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached at (703) 308-2111. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

TC 3700, AU 3738

Brian E. Pellegrino

*Brian E. Pellegrino*